

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

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| JOHN GARVEY | : | CIVIL ACTION |
| Plaintiff, | : | |
| | : | |
| v. | : | |
| | : | |
| JEFFERSON SMURFIT CORP., | : | |
| U.S., | : | |
| Defendant. | : | NO. 00-1527 |

M E M O R A N D U M

Newcomer, S.J. October , 2000

I. BACKGROUND

Plaintiff, John Garvey ("Garvey"), filed suit against defendant Jefferson Smurfit Corporation ("JSC") alleging, inter alia, that defendant terminated Garvey's employment in violation of the American With Disabilities Act ("ADA") and the Pennsylvania Human Relations Act ("PHRA"). Defendant now moves for summary judgment on Garvey's ADA claim, and Garvey's other claims, namely his Age Discrimination in Employment Act ("ADEA") and his Family and Medical Leave Act ("FMLA") claims. Additionally, defendant argues that plaintiff's claims of harassment with respect to each of his causes of action should be dismissed. Plaintiff only opposes defendant's summary judgment motion with respect to the ADA and PHRA claims.

Garvey is a fifty-four (54) year old male who, as of July 31, 1998 was employed at the corrugated box manufacturing plant of JSC for thirty-four (34) years. In 1988, JSC promoted

Garvey to the position of production supervisor.

In November 1994, Garvey learned that he suffered from a severe form of hypertension after he fell off a machine at work and went to Crozer-Chester Medical Center for treatment. While at the hospital, the treating physician informed Garvey that his blood pressure was high enough to trigger an instant stroke. Shortly after the accident, Garvey began treatment for his hypertension.

Several years passed before Garvey's hypertension caused any major incident. However, in September 1997, Garvey suffered three dizzy spells at work. Employees at the JSC plant work on a production schedule of three shifts with the first shift beginning at 7:00 a.m. and finishing at 3:00 p.m. The second shift begins at 3:00 p.m. and finishes at 11:00 p.m. Finally, the third shift begins at 11:00 p.m. and finishes at 7:00 a.m. When Garvey suffered his dizzy spells, he was working on the third shift. Garvey could not remain standing while he worked, so he went home and went to bed.

Garvey's doctor, Dr. Khatri, treated Garvey after Garvey's dizzy spell and ordered Garvey not to work on the third shift. Additionally, she restricted Garvey to working no more than forty (40) hours per week. Dr. Khatri placed these restrictions upon Garvey because of Garvey's uncontrollable hypertension. To effectuate these restrictions, Dr. Khatri

issued Garvey a letter to take to JSC for documentation of his employment restrictions. One reason Dr. Khatri recited in her letter justifying the "no-third-shift" restriction is that one of Garvey's medications could cause imbalance and had to be taken at night. Garvey also remembers that Dr. Khatri explained that he needed "downtime to relax" during the weekends and therefore, Garvey could only work Monday through Friday.

Garvey brought the letter to work and gave it to Robert Cruz, Garvey's supervisor and Production Manager at JSC. Garvey also gave the letter to George Howard, the General Manager at JSC. In response, Howard wrote a letter to Garvey which stated: "We fully intend to honor these restrictions until such time as your doctors feel they are no longer required...While the restrictions are an inconvenience to running our plant, we are concerned for your well being and will accommodate your needs."

To accommodate Garvey, defendant alleges it created a position for plaintiff - supervisor of the 87 inch corrugator machine. On the other hand, Garvey explained in his deposition that nobody at JSC told him the job was created as a temporary one for Garvey. To further accommodate Garvey, Garvey supervised the 87 while rotating two shifts, the first and second but not the third. Prior to JSC's accommodation, there is evidence that there had been only one supervisor per shift, but that after the accommodation two supervisors worked during Garvey's shift.

While Garvey rotated between two shifts, two other supervisors, Wayne Leshner and Jack Hack, also rotated between two shifts instead of three. There is also evidence that after Garvey's medical restrictions arose in September 1997, Cruz pressured Garvey to quit or retire or go out on disability leave.

In April 1998, Garvey was involved in a non-work related car accident and he took FMLA leave from April 14, 1998 until July 27, 1998. Once he returned, Howard told Garvey that Garvey's services were no longer needed on the 87 machine and that JSC was placing him on short term disability. Howard also suggested that Garvey apply for long term disability. Thereafter, on July 31, 1998, Garvey's employment with JSC terminated.

II. DISCUSSION

A. Legal Standard

Summary judgment is appropriate "if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law." FED.R.CIV.P. 56© (1994). The party moving for summary judgment has the initial burden of showing the basis for its motion. See Celotex Corp. v. Catrett, 477 U.S. 317, 323 (1986). Once the movant adequately supports its motion pursuant to Rule 56(c), the burden shifts to

the nonmoving party to go beyond the mere pleadings and present evidence through affidavits, depositions, or admissions on file to show that there is a genuine issue for trial. See id. at 324.

A genuine issue is one in which the evidence is such that a reasonable jury could return a verdict for the nonmoving party. See Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 248 (1986). When deciding a motion for summary judgment, a court must draw all reasonable inferences in the light most favorable to the non-movant. See Big Apple BMW, Inc. v. BMW of N. Am., Inc., 974 F.2d 1358, 1363 (3rd Cir. 1992).

Moreover, a court may not consider the credibility or weight of the evidence in deciding a motion for summary judgment, even if the quantity of the moving party's evidence far outweighs that of its opponent. See id. Nonetheless, a party opposing summary judgment must do more than rest upon mere allegations, general denials, or vague statements. See Trap Rock Indus., Inc. v. Local 825, 982 F.2d 884, 890 (3rd Cir. 1992).

B. GARVEY'S ADA AND PHRA CLAIMS

The ADA provides that "[n]o covered entity shall discriminate against a qualified individual with a disability because of the disability of such individual in regard to job application procedures, the hiring, advancement, or discharge of employees, employee compensation, job training, and other terms, conditions, and privileges of employment." 42 U.S.C. § 12112(a)

(1995)).¹ JSC argues that Garvey is neither disabled, nor a qualified individual within the meaning of the ADA.

A plaintiff has a "disability" for the purposes of the ADA if he (1) has "a physical or mental impairment that substantially limits one or more of the major life activities of such individual"; (2) has "a record of such an impairment"; or (3) is "regarded as having such an impairment." Kelly v. Drexel University, 94 F.3d 102, 105 (3rd Cir. 1996) (citing 42 U.S.C. § 12102(2) and 29 C.F.R. § 1630.2(g)).

The parties do not dispute that Garvey suffers from a physical impairment, namely uncontrollable hypertension. Indeed Garvey's treating specialist in cardiology, diagnosed Garvey with "hypertensive cardiovascular disease", and for purposes of the ADA, a cardiovascular condition is a physical impairment. See 29 C.F.R. § 1630.2(h).

Now, the question becomes whether Garvey's hypertension substantially limits one or more major life activities. Defendant argues that Garvey's physical impairment merely limits him from working more than 40 hours per week, and that limitation cannot qualify Garvey as disabled as a matter of law. See Brennan v. National Tel. Dir. Corp., 850 F. Supp. 331, 343 (E.D.Pa. 1994) ("[A]nyone who can work 40 hours a week as a

¹Claims of handicap discrimination under the PHRA are generally analyzed using the same standards as ADA claims. See Kelly v. Drexel University, 94 F.3d 102, 105 (3rd Cir. 1996).

limitation of their abilities is not suffering a substantial impairment of a major life activity, namely, the ability to work."). However, defendant overlooks Garvey's claim that his hypertension substantially limits Garvey's major life activities of interpersonal relations and socializing.

Although the ADA does not define the phrase "substantially limits a major life activity," the EEOC regulations provide guidance. See Mondzelewski v. Pathmark Stores, Inc., 162 F.3d 778, 782 (3rd Cir. 1998); see also 42 U.S.C. § 12116 (empowering the EEOC to promulgate regulations implementing the ADA). As provided by the regulations, the phrase "substantially limits" means "[u]nable to perform a major life activity that the average person in the general population can perform" or "[significantly restricted as to the condition, manner or duration under which an individual can perform a particular major life activity as compared to the condition, manner, or duration under which the average person in the general population can perform that same major life activity." 29 C.F.R. § 1630.2(j)(1)(I), (ii). The regulations further provide that courts should consider the following factors when assessing whether a major life activity has been substantially limited: "(I) [t]he nature and severity of the impairment; (ii) [t]he duration or expected duration of the impairment; and (iii) [t]he permanent or long term impact, or the expected permanent or long

term impact of [the impairment] or resulting from the impairment." 29 C.F.R. § 1630.2(j)(2)(I)-(iii). Major life activities also include: "caring for oneself, performing manual tasks, walking, seeing, hearing, speaking, breathing, learning...." 29 C.F.R. § 1630.2(I).

At least one court in this circuit and several other courts have determined that social interaction is a major life activity. See Sherback v. Wright Automotive Group, 987 F. Supp. 433, 438 (W.D.Pa. 1997); see also Doyal v. Oklahoma Heart, Inc., 213 F.3d 492, 496 (10th Cir. 2000) (assuming without deciding that "interacting with others" is a major life activity); McAlindin v. County of San Diego, 192 F.3d 1226, 1232-35 (9th Cir. 1999); Lemire v. Silva, 104 F. Supp.2d 80, 87 (D.Mass. 2000) ("The ability to interact with others is an inherent part of what it means to be human".). This court agrees that interpersonal relations and socializing are major life activities.

This court further finds that a jury could reasonably conclude that Garvey is substantially limited in the major life activity of interaction with others. There is evidence that anytime Garvey becomes involved in a stressful social situation or argument, his blood pressure will rise to a dangerous level. Thus, Garvey must avoid stressful situations, arguments, heated debates, and emotional conversations at all costs. Consequently,

a question of fact exists whether plaintiff's inability to enter into stressful situations, interpersonal or otherwise, is a substantial limitation on his ability to interact with others. Cf. Lemire, 104 F. Supp.2d at 88 (finding that a question of fact existed as to whether plaintiff's inability to interact with others in crowded places is a substantial limitation on her ability to interact with others).

Under the ADA, disability alone is insufficient to state a prima facie case; rather an individual must also be a "qualified individual with a disability." See 42 U.S.C. § 12111(a); Marinelli v. City of Erie, Penn., 216 F.3d 354, 359 (3rd Cir. 2000). A person is qualified pursuant to the ADA if "with or without reasonable accommodation, [that person] can perform the essential functions of the employment position that such individual holds or desires." 42 U.S.C. § 12111(8)). JSC claims that Garvey cannot state a claim under the ADA because he cannot perform the essential functions of working overtime or working a three shift rotation.

There is sufficient evidence for a jury to conclude that working overtime or working a three shift rotation are not essential parts of Garvey's supervisor job. First, there is evidence that not all supervisors at JSC worked a three shift rotation. Specifically, Wayne Leshar and Jack Hack were rotating between two shifts, and at least one other supervisor may only

have been working one shift. Moreover, there is other evidence that working overtime was not essential. At a minimum, an issue of material fact exists as to whether working overtime or working a three shift rotation are essential parts of Garvey's position. Thus, Garvey may have been qualified for his supervisory position.

C. GARVEY'S ADEA AND FMLA CLAIMS

Garvey does not oppose JSC's Motion for Summary Judgment as to Garvey's ADEA and FMLA claims. Upon review of JSC's motion, the Court shall grant Garvey's ADEA and FMLA claims.²

D. GARVEY'S HARASSMENT CLAIMS

Furthermore, Garvey does not oppose JSC's Motion for Summary Judgment as to Garvey's harassment claims. After reviewing JSC's motion, and the available evidence, the Court finds that there is no evidence to support Garvey's harassment claims with respect to any of his causes of action. Courts have dismissed claims of harassment even when far more evidence of harassment exists. See, e.g., Walton v. Mental Health Ass'n. of Southeastern Pennsylvania, 168 F.3d 661, 667 (3rd Cir. 1999)

² Courts in this Circuit have granted Motions for Summary judgment as unopposed, as long as the Motion is appropriate. See Anchorage Assocs. v. Virgin Islands Board of Tax Review, 922 F.2d 168, 174 (3d Cir. 1990); Atkinson v. City of Philadelphia, NO. CIV. A. 99-1541, 2000 WL 793193 *2 (E.D.Pa., Jun 20, 2000); Jones v. Personal Health Care Inc., No.Civ.A. 92-4003, 1992 WL 396784 (E.D.Pa. Dec. 23, 1992).

(finding that supervisor's alleged actions of telling employee she was manic-depressive and calling her ten days consecutively when she was first hospitalized for depression, were not pervasive or severe enough to support a harassment claim). In this case, there is no evidence of harassment, and plaintiff's claim must fail.

Clarence C. Newcomer, S.J.